U.S. DIST. COURT EAST DIST. WISC
FILED
FEB 19 2010
AT_____O'CLOCK_____M
JON W. SANFILIPPO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 09-CR-170

ORIGINAL

PETER T. ELLIOTT,

Defendant.

PLEA AGREEMENT

1. The United States of America, by its attorneys, Michelle L. Jacobs, United States Attorney for the Eastern District of Wisconsin, and Gregory J. Haanstad, Assistant United States Attorney, and the defendant, Peter T. Elliott, individually and by attorney Thomas G. Wilmouth, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement:

CHARGES

2. The defendant has been charged in a four-count information, which alleges violations of Title 18, United States Code, Section 1344(1).

3. The defendant has read and fully understands the charges contained in the information. He fully understands the nature and elements of the crime with which he has been charged, and the charges and the terms and conditions of the plea agreement have been fully explained to him by his attorney.

4. The defendant voluntarily agrees to waive prosecution by indictment in open court.

5. The defendant voluntarily agrees to plead guilty to count one of the information, a copy of which is attached as Exhibit A.

6. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offense described in paragraph 5. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove beyond a reasonable doubt the facts set forth in Exhibit B. The defendant admits that those facts are true and correct and that they establish his guilt beyond a reasonable doubt. The information in Exhibit B is provided for the purpose of setting forth a factual basis for the plea of guilty. It is not a full recitation of the defendant's knowledge of, or participation in, this offense.

PENALTIES

7. The parties understand and agree that the offense to which the defendant will enter a plea of guilty carries a maximum term of imprisonment of 30 years, a maximum fine of $1,000,000, a five-year term of supervised release, and a $100 special assessment. The parties further recognize that a restitution order will be entered by the court.

8. The defendant acknowledges, understands, and agrees that he has discussed the relevant statutes as well as the applicable sentencing guidelines with his attorney.

DISMISSAL OF REMAINING COUNTS

9. The government agrees to move to dismiss the remaining counts of the information at the time of sentencing.

ELEMENTS

10. The parties understand and agree that in order to sustain the bank fraud charges as set forth in the information, the government must prove each of the following propositions beyond a reasonable doubt:

First, that there was a scheme to defraud a financial institution or to obtain money, credits, assets or other property owned by, or in the custody or control of, a financial institution by means of materially false or fraudulent pretenses, representations, or promises as charged in the information;

Second, that the scheme involved misrepresentations or deceptions concerning a material matter;

Third, that the defendant executed the scheme;

Fourth, that the defendant did so knowingly and with the intent to defraud; and

Fifth, that at the time of the charged offense the deposits of the financial institution were insured by the Federal Deposit Insurance Corporation.

SENTENCING PROVISIONS

11. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

12. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the Sentencing Guidelines when sentencing the defendant.

13. The parties acknowledge and agree that they have discussed all of the sentencing guidelines provisions which they believe to be applicable to the offenses set forth in paragraph 5.

The defendant acknowledges and agrees that his attorney in turn has discussed the applicable sentencing guidelines provisions with him to the defendant's satisfaction.

14. The parties acknowledge and understand that prior to sentencing the United States Probation Office will conduct its own investigation of the defendant's criminal history. The parties further acknowledge and understand that, at the time the defendant enters a guilty plea, the parties may not have full and complete information regarding the defendant's criminal history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentencing court's determination of the defendant's criminal history.

Sentencing Guidelines Calculations

15. The parties acknowledge, understand, and agree that the sentencing guidelines calculations included in this agreement represent the positions of the parties on the appropriate sentence range under the sentencing guidelines. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court may impose a reasonable sentence above or below the guideline range. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

Relevant Conduct

16. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider relevant conduct in calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offenses to which the defendant is pleading guilty.

Base Offense Level

17. The parties agree to recommend to the sentencing court that the applicable base offense level for the offenses charged in the information is seven under Sentencing Guidelines Manual § 2B1.1(a)(1).

Specific Offense Characteristics

18. The parties understand and acknowledge that the government will recommend to the sentencing court that, because the offense involved more than $2,500,000 but less than $7,000,000 in loss, an eighteen-level increase in the offense level for the offenses charged in the information is applicable under Sentencing Guidelines Manual § 2B1.1(b)(1)(J).

19. The parties understand and acknowledge that the government will recommend to the sentencing court that, because the defendant derived more than $1,000,000 in gross receipts from one or more financial institution as a result of the offense, a two-level increase in the offense level is applicable under Sentencing Guidelines Manual § 2B1.1(b)(14)(A).

20. The parties agree to recommend to the sentencing court that, because the defendant abused a position of trust, in a manner which significantly facilitated the commission or concealment of the offense, a two-level increase in the offense level is applicable under Sentencing Guidelines Manual § 3B1.3.

21. The parties agree to recommend to the sentencing court that there are no other specific offense characteristics that warrant an increase in offense level under Sentencing Guidelines Manual § 2B1.1.

Other Adjustments

22. The parties agree to recommend to the sentencing court that, other than the two-level increase identified in paragraph 20 above, there are no applicable enhancements under Chapters 3 or 5 of the Sentencing Guidelines Manual.

Acceptance of Responsibility

23. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a), but only if the defendant exhibits conduct consistent with the acceptance of responsibility. The defendant acknowledges, understands, and agrees that conduct consistent with the acceptance of responsibility includes but is not limited to the defendant's voluntary identification and disclosure to the government of any and all actual or potential victims of the offenses prior to sentencing. In addition, if the court determines at the time of sentencing that the defendant is entitled to the two-level reduction under § 3E1.1(a), the government agrees to make a motion recommending an additional one-level decrease as authorized by Sentencing Guidelines Manual § 3E1.1(b) because the defendant timely notified authorities of his intention to enter a plea of guilty.

Sentencing Recommendations

24. Both parties reserve the right to provide the district court and the probation office with any and all information which might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offense as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

25. Both parties reserve the right to make any recommendation regarding any other matters not specifically addressed by this agreement.

26. The government agrees to recommend a sentence within the applicable sentencing guideline range, as determined by the court.

Court's Determinations at Sentencing

27. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court. The sentencing court will make its own determinations regarding any and all issues relating to the imposition of sentence and may impose any sentence authorized by law up to the maximum penalties set forth in paragraph 7 above. The parties further understand that the sentencing court will be guided by the sentencing guidelines but will not be bound by the sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

28. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentence imposed by the court.

FINANCIAL MATTERS

29. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable upon entry of the judgment of conviction. The defendant agrees not to request any delay or stay in payment of any and all financial obligations.

30. The defendant agrees that, during the period of any supervision (probation or supervised release) imposed by the court in this case, the defendant will provide the Financial Litigation Unit (FLU) of the United States Attorney's Office with completed financial forms which will be provided by FLU, and will provide any documentation required by those forms. The defendant will provide FLU with such completed financial forms with required documentation

within the first two months of supervision, at six month intervals thereafter during supervision, and within the last six months of scheduled supervision.

Special Assessment

$100.00

31. The defendant agrees to pay the special assessment in the amount of ~~$400~~ prior to or at the time of sentencing.

Restitution

32. The defendant agrees to pay restitution as ordered by the court. The defendant understands that because restitution for the offense is mandatory, the amount of restitution shall be imposed by the court regardless of the defendant's financial resources. The defendant agrees to cooperate in efforts to collect the restitution obligation. The defendant understands that imposition or payment of restitution will not restrict or preclude the filing of any civil suit or administrative action.

DEFENDANT'S WAIVER OF RIGHTS

33. In entering this agreement, the defendant acknowledges and understands that in so doing he surrenders any claims he may have raised in any pretrial motion, as well as certain rights which include the following:

a. If the defendant persisted in a plea of not guilty to the charges against him, he would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.

b. If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.

c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.

d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on his own behalf. The defendant would be entitled to compulsory process to call witnesses.

e. At such trial, defendant would have a privilege against self-incrimination so that he could decline to testify and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify on his own behalf.

34. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offense to which the defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

35. The defendant acknowledges and understands that he will be adjudicated guilty of the offense to which he will plead guilty and thereby may be deprived of certain rights, including but not

limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

36. The defendant knowingly and voluntarily waives all claims he may have based upon the statute of limitations, the Speedy Trial Act, and the speedy trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

Further Civil or Administrative Action

37. The defendant acknowledges, understands, and agrees that the defendant has discussed with his attorney and understands that nothing contained in this agreement is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies.

GENERAL MATTERS

38. The parties acknowledge, understand, and agree that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

39. The parties acknowledge, understand, and agree that the United States Attorney's office is free to notify any local, state, or federal agency of the defendant's conviction.

40. The defendant understands that pursuant to the Victim and Witness Protection Act, the Justice for All Act, and regulations promulgated thereto by the Attorney General of the United

States, the victim of a crime may make a statement describing the impact of the offense on the victim and further may make a recommendation regarding the sentence to be imposed. The defendant acknowledges and understands that comments and recommendations by a victim may be different from those of the parties to this agreement.

EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT

41. The defendant acknowledges and understands that if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the government. The defendant further acknowledges and understands that the government's agreement to dismiss any charge is conditional upon final resolution of this matter. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the government retains the right to reinstate any and all dismissed charges and to file any and all charges which were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and his attorney have signed a proffer letter in connection with this case, then the defendant further acknowledges and understands that he continues to be subject to the terms of the proffer letter.

VOLUNTARINESS OF DEFENDANT'S PLEA

42. The defendant acknowledges, understands, and agrees that he will plead guilty freely and voluntarily because he is in fact guilty. The defendant further acknowledges and agrees that no

threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

ACKNOWLEDGMENTS

I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney and I am satisfied that my attorney has provided effective assistance of counsel.

Date: 2.19.10

PETER T. ELLIOTT
Defendant

I am the defendant's attorney. I carefully have reviewed every part of this agreement with the defendant. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: 2.19.10

THOMAS G. WILMOUTH
Attorney for Defendant

For the United States of America:

Date: 2-19-10

JAMES L. SANTELLE
United States Attorney

Date: 2/19/2010

GREGORY J. HAANSTAD
Assistant United States Attorney

U.S. DISTRICT COURT
EASTERN DISTRICT-WI
FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

'09 JUL -8 P1:58

UNITED STATES OF AMERICA,

JON W. SANFILIPPO
CLERK

Plaintiff,

v.

Case No. 09-CR- 09 CR-170
[18 U.S.C § 1344]

PETER T. ELLIOTT,

Defendant.

INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

1. From approximately September 2008 through October 2008, in the State and Eastern District of Wisconsin,

PETER T. ELLIOTT

knowingly executed a scheme to defraud a federally insured financial institution, which scheme involved misrepresentations and deceptions concerning material matters.

2. At all times relevant to this information, the deposits of Associated Bank were insured by the Federal Deposit Insurance Corporation.

3. From June 1974 through October 31, 2008, Elliott was an attorney licensed to practice law in the State of Wisconsin.

4. In connection with his law practice, Elliott maintained an Interest on Lawyers Trust Account (IOLTA) at Associated Bank. An IOLTA is an account in which an attorney holds funds in trust for the attorney's clients.

EXHIBIT
A

5. The funds in an IOLTA account are ultimately to be disbursed only to, or on behalf of, the attorney's clients.

6. No funds belonging to the attorney may be deposited into the attorney's IOLTA account.

7. In the late 1990s, Elliot began occasionally using funds in his IOLTA account for personal purposes. Over the course of approximately ten years, Elliot diverted approximately $2.5 million in IOLTA funds to his own personal use.

8. To cover the resulting deficit in his IOLTA account, Elliot devised a check kiting scheme in September 2008. According to that scheme, Elliot regularly deposited into his IOLTA account checks drawn on his personal checking account at Wells Fargo Bank. Within days of presenting a particular Wells Fargo check to Associated Bank for deposit in his IOLTA account, Elliot would request that Wells Fargo stop payment on the check.

9. The result was to temporarily and artificially inflate the IOLTA account balance, making it appear that the account had sufficient funds to cover the large checks that Elliot wrote against the IOLTA account between the time of the deposits and the time of the subsequent stop-payments.

10. Between September 25, 2008, and October 31, 2008, Elliot deposited and stopped payment on a total of 57 checks totaling more than $35 million. Among those checks were those identified in paragraph 11 below.

THE UNITED STATES ATTORNEY FURTHER CHARGES:

Execution of the Scheme

11. On or about the dates indicated, in the State and Eastern District of Wisconsin,

PETER ELLIOTT

executed and attempted to execute his scheme to defraud a federally insured financial institution in the manner described below:

Count	Date	Description of Execution
One	September 30, 2008	Elliott deposited check number 21813, in the amount of $672,619.17, which was drawn on a personal account he maintained at Wells Fargo Bank, into an IOLTA account he maintained at Associated Bank. That same day, Elliott wrote a check from his IOLTA account in the amount of $672,619.17. On October 3, 2008, Elliott caused Wells Fargo Bank to stop payment on check number 21813.
Two	October 1, 2008	Elliott deposited check number 21819, in the amount of $665,000, which was drawn on a personal account he maintained at Wells Fargo Bank, into an IOLTA account he maintained at Associated Bank. That same day, Elliott wrote a check from his IOLTA account in the amount of $488,634.24. On October 7, 2008, Elliott caused Wells Fargo Bank to stop payment on check number 21819.
Three	October 3, 2008	Elliott deposited check number 20333, in the amount of $700,000, which was drawn on a personal account he maintained at Wells Fargo Bank, into an IOLTA account he maintained at Associated Bank. That same day, Elliott wrote checks from his IOLTA account totaling $506,145.06. Elliott caused Wells Fargo to stop payment on check number 20333 on October 9, 2008.

Four	October 13, 2008	Elliott deposited check number 21669, in the amount of $350,000, which was drawn on a personal account he maintained at Wells Fargo Bank, into an IOLTA account he maintained at Associated Bank. That same day, Elliott wrote a check from his IOLTA account in the amount $383,955.15. Elliott caused Wells Fargo to stop payment on check number 21669 on October 17, 2008.

All in violation of Title 18, United States Code, section 1344(1).

MICHELLE L. JACOBS
Acting United States Attorney

Exhibit B

Peter Elliott was an attorney who practiced in West Allis, Wisconsin. In connection with his practice, he maintained an interest on lawyers trust account (IOLTA) at Associated Bank, whose deposits are insured by the Federal Deposit Insurance Corporation. Elliott began using IOLTA account funds for personal and other business expenses. As a result, he began to have difficulty in meeting client obligations, and he began using newly deposited client funds to pay older client obligations that came due.

By September 25, 2008, the IOLTA account balance had fallen to $46,339.06, which was not sufficient to cover the client payments that were coming due. For the next six weeks, Elliott executed a type of check-kiting scheme in which he would deposit into the IOLTA account at Associated Bank checks drawn on his personal account at Wells Fargo Bank. Within days of presenting a particular Wells Fargo check to Associated Bank for deposit into the IOLTA account, Elliott would request that Wells Fargo stop payment on the check. He would then deposit another check from his Wells Fargo personal account into the Associated Bank IOLTA account. By repeatedly depositing into the IOLTA account similarly-sized checks drawn on the Wells Fargo account, staggering his stop payment order, and then depositing additional checks drawn on the Wells Fargo account, Elliott briefly caused a "float," i.e., the illusion that there was more money in the IOLTA account available to pay amounts drawn on the IOLTA account than was actually available. This cycle continued for approximately six weeks, during which time Elliott deposited into the IOLTA account – and subsequently stopped payment on – a total of 57 checks totalling more than $35 million.

Among the checks deposited according to the scheme was one deposited on September 30, 2008. On that date, Elliott deposited check number 21813, in the amount of $672,619.17, which was drawn on his personal account at Wells Fargo Bank, into his IOLTA account at Associated Bank. That same day, Elliott wrote $672,619.17 in checks from his IOLTA account. On October 3, 2008, Elliott caused Wells Fargo Bank to stop payment on check number 21813.

Associated Bank contacted Elliott at a number of points in October 2008 and inquired about the stop-payments. Each time, Elliott claimed that he had made an error and that he would make a large deposit in the coming days to correct everything. Associated Bank finally froze Elliott's IOLTA account in early November. Associated Bank has sustained losses that they claim to be $2,566,801.30.